



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2005

Ms. Meredith Ladd  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2005-06252

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231166.

The McKinney Police Department (the "department"), which you represent, received a request for all information pertaining to a particular person, including particular incidents. You inform us that you have released some information, and you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because section 552.101 can provide a compelling reason to withhold information, we will consider your arguments regarding this exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Upon review of the submitted information, we find you have not demonstrated that the information at issue consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001(1) (defining “abuse”), (4) (defining “neglect”). Therefore, the submitted information may not be withheld under section 552.101.

We note that the submitted information contains driver’s license information. Section 552.130 of the Government Code excepts from disclosure information that “relates to...a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Gov’t Code §552.130(a). By its terms, section 552.130 only applies to motor vehicle records issued by the State of Texas. In this case, one of the driver’s license numbers was issued by a state other than Texas, and is therefore not excepted under section 552.130. However, you must withhold the Texas driver’s license information that we have marked.

In addition, we note that the submitted information contains a social security number. Section 552.147 of the Government Code<sup>1</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Public Information Act

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<sup>1</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

(the “Act”). Therefore, the department must withhold the social security number marked in the submitted information under section 552.147.<sup>2</sup>

In summary, the department must withhold the Texas motor vehicle record information under section 552.130 and the social security number under section 552.147. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at(877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/seg

Ref: ID# 231166

Enc. Submitted documents

c: Ms. Czarina C. Manalansang  
966 Cannon Drive  
Little Rock AFB, Arkansas 72099  
(w/o enclosures)